

**Opening Statement of the Honorable Fred Upton**  
**Joint Hearing of Energy and Commerce Subcommittees on**  
**Health and on Commerce, Manufacturing, and Trade**  
**"Food Marketing: Can 'Voluntary' Government**  
**Restrictions Improve Children's Health?"**  
**October 12, 2011**  
*(As Prepared for Delivery)*

Two and a half years ago, Congress established an Interagency Working Group comprised of the Food and Drug Administration, the Centers for Disease Control and Prevention, the U.S. Department of Agriculture, and the Federal Trade Commission. The IWG was created to conduct a study and develop recommendations for standards on the marketing of food to children and teenagers.

The study results and recommendations were supposed to take the form of a report to Congress, which we as the representative branch of government can consider as we decide whether and how to proceed. Instead of conducting the study or providing recommendations, the IWG unilaterally proposed guidelines that were so extreme that they would prevent the marketing to children of foods that most parents consider a win if their kids eat – such as yogurt, cheese sticks, and even soup. Moreover, the IWG's definition of marketing was so broad that it endangered the philanthropic funding that many community sports programs and schools rely on to fund athletic activities – the one thing proven to combat childhood obesity.

While this initiative was portrayed as a helping hand to parents – to reduce children's exposure to advertising for foods with limited nutritional value – to many of us and our constituents, this appears to be a first step toward Uncle Sam planning our family meals. The IWG's preliminary proposal states flatly that foods would have to be reformulated, and in some cases may disappear altogether.

While the testimony suggests the agencies are dealing with some of the most extreme aspects of the proposal, significant concerns remain. These guidelines are labeled as voluntary, which to me means they are largely aspirational. But what happens when a litigious group sues a food manufacturer because it showed a commercial advertising a new kind of chocolate treat? Regardless of whether a child sees a commercial for that treat, the ultimate purchasing decision rests with the parent who purchases the groceries – and those groceries carry nutrition labels that every parent can read.

I'm also very concerned regarding the impact of the guidelines on jobs. According to a study by IHS Consulting, the guidelines would lead to a loss of as many as 74,000 jobs in just one year and 378,000 jobs over four years.

The Senate report language called for a study and a report to Congress. We have neither a study nor a report; rather, we have a quasi-regulatory maneuver that has drawn fire from a broad range of organizations and members of Congress. I am concerned about both the IWG's recommendations and the manner in which they were produced going beyond the scope of their charge. I believe this approach opens the door to needless and expensive litigation, and ultimately, I believe there are much better approaches to improve the health of our children.

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